STATEMENT OF
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BEFORE THE SENATE FINANCE COMMITTEE
MARCH 20, 2001

THE U.S.-JORDAN FREE TRADE AGREEMENT

Chairman Grassley and distinguished members of the Senate Finance Committee:

Thank you for inviting me to testify regarding the U.S.-Jordan Free Trade Agreement.

I am sure all of us can support on political grounds the concept of a free trade agreement between Jordan and the United States as part of promoting political and economic stability in the Middle East.

However, there are provisions in the October 24, 2000 text which, on trade grounds, are very troublesome. I refer specifically to Articles 5 and 6, and by reference, Article 17, of the Agreement before you. The American negotiators, in their drive to conclude a precedent-making trade agreement in the waning days of the previous Administration, appear to have forgotten Seattle 1999 and the outrage the developing world expressed after President Clinton embraced the notion of possible sanctions for so-called violations of environmental and labor standards.

I believe the inclusion of Articles 5 and 6 in this trade agreement is unwise and, at the very least, premature. I believe they should be removed entirely from the Agreement, or specifically made not subject to Article 17 dispute settlement coverage, for the following reasons:

1. To my knowledge, the United States itself has no consensus regarding to what degree - if any - environment and labor issues should be included in trade agreements. There has been no credible national debate on this highly contentious matter, and the Congress itself is divided. Yet the Congress is being asked to approve a trade agreement containing not only environmental and labor provisions within the formal text of the Agreement but also, and far more significantly, provisions for sanctions for vague, unspecified violations of such environmental and labor provisions (i.e., "...shall not fail to effectively enforce its [environmental][labor] laws..." {Articles 5 and 6} and "...failed to carry out its obligations..." {Article 17}).

What does failure to enforce "effectively" mean? By whose standards? What are the "obligations" in Articles 5 and 6? And, parenthetically, what right does one Party have to oversee or judge the enforcement by the other Party of its domestic laws?

2. It is not clear whether the provisions of Article 5 and 6 are actionable if not lived up to. I am informed that the words "strive to" in paragraphs 1 and 2 of both Articles were purposefully chosen to convey the meaning that the undertakings therein were not legally binding, i.e., not

actionable in case of failure. Yet at the same time, I am informed that Article 5 (3)(a) and Article 6 (4)(a) which both use the words "...shall not fail to effectively enforce..." are viewed by the U.S. as legally binding and actionable. What is the correct interpretation here? Are the Articles binding or not and, thus, enforceable or not enforceable? Article 17 (1)(ii) of the Agreement authorizes a Party to seek consultations with the other if the first Party believes the other Party has failed to carry out its "obligations" under the agreement. Article 17 elsewhere also presents the possibility of sanctions if the consultations fail. Hence, the question of whether or not Articles 5 and 6, in part or in their entirety, are enforceable, actionable "obligations" becomes critical.

Until there is a clear understanding by both parties and by the Congress regarding these Articles, I believe they should be deleted or, at the very least, clarified by means of a formal written statement of the U.S. Government.

3. While Jordan, for political reasons, may have been willing to tolerate the inclusion of Articles 5 and 6, there is certainly no guarantee that other WTO members, particularly from the developing world, will be so accommodating. Indeed, the U.S. was put on notice in Seattle by a large number of developing nations - with whom we have far more important trading relations than Jordan - that in their view, "sanctionable" environmental and labor provisions have no place in trade agreements, be those agreements bilateral, plurilateral, or multilateral in structure.

4. Furthermore, there is no consensus in the WTO regarding the placement of environmental and labor provisions in trade agreements coming under its purview. Indeed, the WTO remains divided on whether or not a member may take punitive trade actions against another member because of the latter's alleged domestic environmental or labor "violations." All WTO members agree that bilateral trade agreements must be submitted to the WTO for review and approval. Since the WTO itself has no consensus on role or even legitimacy of environmental and labor provisions in trade agreements, Articles 5 and 6 of the U.S.-Jordan Free Trade Agreement should be deleted or clarified regarding their compatibility with the GATT/WTO.

In my view, Articles 5 and 6 as written are largely fluff, open to widely differing (even if plausible) interpretations and, as such, causes for possible unfortunate differences between Jordan and the United States in the years ahead as the agreement is implemented. Articles 5 and 6 do not advance the "cause" of either international environmental or labor affairs and only add confusion to what should be a straightforward free trade agreement. Indeed, the only result I can foresee is countries adopting lower environmental and labor standards for fear of themselves being unable to effectively enforce higher standards - hardly a desired result. These provisions on labor and environment are a double-edged sword. U.S. enforcement, possibly as a waiver under our Clean Air Act or any exercise of discretion by enforcement agencies, prosecutors, or courts, could become a trade agreement violation subject to trade sanctions. This is a dangerous precedent, and one that the Congress should not consider lightly.

From a broader perspective, I have real questions regarding the advisability of making trade agreements carry burdens they are incapable of handling, or at least handling well. The linkages between trade and the environment, for example, are exceedingly complex and to this day not

well understood even by experts in both fields. That there may be some linkage cannot be denied. But until we have a better understanding of the linkages - both helpful and harmful - and how to craft agreements which advance both trade and environment/labor issues, we are best advised not to include such imperfectly understood matters in trade agreements.

Thank you, Mr. Chairman. I would be pleased to answer, to the best of my ability, any questions other Members of the Committee and you may have.